

BRIAN H GETZ, ESQ. (CSBN 85593)  
LAW OFFICES OF BRIAN H GETZ  
88 Kearny Street, Suite 1850  
San Francisco, CA 94108  
Telephone: (415) 912-5886  
Email: bhgetz@pacbell.net

Attorney for Defendant  
LAWRENCE J. GERRANS

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LAWRENCE J. GERRANS

Defendant.

Case No.: 3:18-CR-00310-EMC

**NOTICE OF MOTION AND MOTION TO  
SET TERMS OF RELEASE PENDING  
SENTENCING**

Hearing Date: On the Pleadings

Hearing Time: On the Pleadings

Courtroom: 5, 17<sup>th</sup> Floor

Judge: Hon. Edward M. Chen

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that before the Honorable Edward Chen, United States District Judge, Defendant LAWRENCE GERRANS, by and through counsel, will move the Court to set the terms of release pending sentencing.

This motion is based on this Notice, Declaration of Counsel of Brian H Getz, Memorandum of Points and Authorities, all applicable judicial and statutory authority, and any oral or documentary evidence to be presented at the hearing of this motion.

DATED: March 17, 2020

Respectfully submitted,

/s/ Brian H Getz

BRIAN H GETZ

Attorney for Defendant

LAWRENCE J. GERRANS

BRIAN H GETZ, ESQ. (CSBN 85593)  
LAW OFFICES OF BRIAN H GETZ  
88 Kearny Street, Suite 1850  
San Francisco, CA 94108  
Telephone: (415) 912-5886  
Email: bhgetz@pacbell.net

Attorney for Defendant  
LAWRENCE J. GERRANS

**IN THE UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LAWRENCE J. GERRANS

Defendant.

) Case No.: 3:18-CR-00310-EMC

) **DECLARATION OF COUNSEL BRIAN H**  
) **GETZ IN SUPPORT OF MOTION TO SET**  
) **TERMS OF RELEASE PENDING**  
) **SENTENCING**

) Hearing Date: On the Pleadings

) Hearing Time: On the Pleadings

) Courtroom: 5, 17<sup>th</sup> Floor

) Judge: Hon. Edward Chen

I, BRIAN H GETZ, say and depose:

1. I am an attorney at law duly licensed to practice law in the State of California and before this Court, and I am the attorney for defendant Lawrence Gerrans.

2. I make this Declaration in support of defendant's Motion to Set Terms of Release Pending Sentencing.

3. I have personal knowledge of the facts stated herein and if called as a witness, I could testify competently to the matters set forth herein.

4. On or about March 16, 2020, the Mayor of San Francisco ordered all residents to "shelter in place" at home effective midnight, March 16, 2020, in order to help prevent the spread of

1 COVID-19.

2 5. The defendant, Larry Gerrans, is as of the date of this motion in custody in the San  
3 Francisco County Jail, pursuant to an agreement with the U.S. Marshall's Service.

4 6. On or about March 16, 2020, I was informed and therefore believe that the Sheriff of  
5 the City and County of San Francisco has placed the jail population, including Mr. Gerrans, on  
6 "lockdown" in order to prevent the spread of COVID-19. This means no visitation.

7 7. On or about March 16, 2020, I was informed and therefore believe that the Sheriff of  
8 the City and County of San Francisco has not opposed the release from custody from the San  
9 Francisco County Jail of nonviolent offenders, under appropriate conditions, in order to help  
10 prevent the spread of COVID-19. The San Francisco Public Defender is filing motion for the  
11 immediate release of non-violent inmates.

12 I declare under penalty of perjury that the foregoing is true and correct, except as to those  
13 matters stated upon information and belief, and as to those matters, I believe them to be true.

14 Executed on this date, the 17th of March, 2020, in San Francisco, California.

15 DATED: March 17, 2020

Respectfully submitted,

16 /s/ Brian H Getz

17 BRIAN H GETZ

18 Attorney for Defendant

19 LAWRENCE J. GERRANS  
20  
21  
22  
23  
24  
25  
26  
27



BRIAN H GETZ, ESQ. (CSBN 85593)  
 LAW OFFICES OF BRIAN H GETZ  
 88 Kearny Street, Suite 1850  
 San Francisco, CA 94108  
 Telephone: (415) 912-5886  
 Email: bhgetz@pacbell.net

Attorney for Defendant  
 LAWRENCE J. GERRANS

**IN THE UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION**

UNITED STATES OF AMERICA,  
  
 Plaintiff,  
  
 vs.  
  
 LAWRENCE J. GERRANS  
  
 Defendant.

Case No.: 3:18-CR-00310-EMC

**MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT OF MOTION  
 TO SET TERMS OF RELEASE PENDING  
 SENTENCING**

Hearing Date: On the Pleadings  
 Hearing Time: On the Pleadings  
 Courtroom: 5, 17<sup>th</sup> Floor  
 Judge: Hon. Edward M. Chen

**INTRODUCTION**

As of the date of this motion, the President has declared a national public health emergency,<sup>1</sup> and the Governor of the State of California has declared a public health emergency throughout the state,<sup>2</sup> both in response to the spread of the Coronavirus Disease 2019 (COVID-19). The Centers of Disease Control and Prevention (CDC) and other health authorities have advised people to take precautions to reduce the exposure to COVID-19 and to slow the spread of the disease. An

<sup>1</sup> See *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak*, <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/> (Mar. 13, 2020).

<sup>2</sup> See *Governor Newsom Declares State of Emergency to Help State Prepare for Broader Spread of COVID-19*, <https://www.gov.ca.gov/2020/03/04/governor-newsom-declares-state-of-emergency-to-help-state-prepare-for-broader-spread-of-covid-19/> (Mar. 4, 2020).

important part of the CDC recommendations is social distancing: keeping an appropriate physical distance between people, and particularly in public settings.<sup>3</sup> To ensure the health and safety of the defendant, Mr. Gerrans, through social distancing, undersigned counsel hereby moves the Court to find extraordinary circumstances present due to the COVID-19 pandemic and order his transfer from the San Francisco County Jail to placement on electronic home monitoring.

### FACTS

Mr. Gerrans was remanded into custody on August 21, 2019, following a hearing in District Court. On January 29, 2020, Mr. Gerrans was found guilty of all charged counts by jury trial. He has remained in the custody of the San Francisco County Sheriff (S.F. Sheriff), via a contract with the U.S. Marshall's Service, to date, in the San Francisco County Jail. *See Declaration of Counsel Brian H Getz in Support of Motion to Set Terms of Release Pending Sentencing* (Declaration of Counsel). On or about March 16, 2020, undersigned counsel learned that the S.F. Sheriff has placed the *entire* San Francisco County Jail on "lockdown" to help prevent the spread of COVID-19. *Id.* Further, undersigned counsel has been informed that the S.F. Sheriff has not opposed requests for the immediate release of nonviolent offenders at the S.F. Jail, under appropriate conditions, again in order to help prevent the spread of COVID-19. *Id.* These releases are being addressed on an ad hoc basis.

### ARGUMENT

#### Grounds for Pre-Sentencing Release

Under 18 U.S.C. § 3143(a), a person who has been found guilty of an offense shall, as a general matter, be allowed to remain at liberty provided he or she can show by clear and convincing evidence that they are neither a flight risk nor danger to the community. For those convicted of

---

<sup>3</sup> *See generally* Centers for Disease Control and Prevention, *Coronavirus (COVID-19)*, <https://www.cdc.gov/coronavirus/2019-ncov/index.html> (updated frequently); California Dep't of Public Health, <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx> (updated daily); *see also* Office of Governor, Executive Order N-25-20 (Mar. 12, 2020).



crimes defined in §§ 3142(f)(1)(A)-(C), however, § 3143(a)(2) states that such defendants shall be detained unless, under (A)(i), the court finds there is substantial likelihood that a motion for acquittal or new trial will be granted, or, under (ii), the government recommends no custody, and under (B), the court finds by clear and convincing evidence that; (1) the person is not likely to flee; or (2) the person poses no danger to the safety of any other person or the community. 18 U.S.C. § 3143(a)(2). The burden is on the defendant to show that he or she is deserving of release. *See United States v. Manso-Portes*, 838 F.2d 889 (7th Cir. 1988); *United States v. Colon-Berrios*, 791 F.2d 211 (1st Cir. 1986); *United States v. Strong*, 775 F.2d 504 (3d Cir. 1985).

The trial court is not required to predict whether the defense will prevail in its motion for new trial. Rather the defendant must only demonstrate a substantial question that is integral to the merits of the case. “Substantial” means a question that could go either way. *United States v. Haney*, 800 F. Supp. 782 (E.D. Ark. 1992) (defendant passed both prongs (1) and (2) and was entitled to bail; defendant showed his motion for acquittal was a “close question” (i.e., could go either way) and he demonstrated he was unlikely to flee or pose a danger).

Despite the provisions of § 3143(a), which seemingly require the remand of most defendants after plea or trial, 18 U.S.C. § 3145(c) contains a provision that allows anyone who falls under the remand provisions of § 3143(a)(2) to be released if the defendant can show that there are exceptional circumstances which justify his or her release. *See United States v. Carr*, 947 F.2d 1239 (5th Cir. 1991); *United States v. Kinslow*, 105 F.3d 555 (10th Cir. 1997). The term “exceptional circumstances” has been interpreted very broadly in the Ninth Circuit. *See, e.g., United States v. Garcia*, 340 F.3d 1013 (9<sup>th</sup> Cir. 2003) (discussing what circumstances might qualify as “exceptional”).

It goes virtually without saying that the present COVID-19 pandemic certainly qualifies as “exceptional circumstances.” As of the date of the writing of this motion, the Mayor of San Francisco has just ordered all residents to “lockdown” at home. And, as previously noted, the S.F. Sheriff has not opposed the request to release nonviolent offenders in the S.F. County Jail, under appropriate conditions, in order to prevent the spread of COVID-19. *See Declaration of Counsel.*

1 Mr. Gerrans is not a danger to the community. The unplanned, unexpected, unforeseen  
2 meeting with Chris Gerrans, a blood relative, is not a reflection of who Lawrence Gerrans is. Since  
3 that episode, Mr. Gerrans has had his trial. Mr. Gerrans no longer poses a threat to harm Chris  
4 Gerrans.

5  
6 **CONCLUSION**

7 Therefore, for the above reasons, the defense respectfully requests the Court, pursuant to the  
8 exceptional circumstances presented by the COVID-19 pandemic, order Mr. Gerrans's transfer from  
9 the San Francisco County Jail to placement on electronic home monitoring until the COVID-19  
10 pandemic is deemed controlled by appropriate government authorities.

11 DATED: March 17, 2020

Respectfully submitted,

12  
13 /s/ Brian H Getz

BRIAN H GETZ

Attorney for Defendant

LAWRENCE J. GERRANS